



January 19, 2022

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: *Written Ex Parte Communication*

WT Docket No. 18-120, *Transforming the 2.5 GHz Band*
AU Docket No. 20-429, *Auction of Flexible-Use Service Licenses in the 2.5 GHz Band for Next-Generation Wireless Services; Comment Sought on Competitive Bidding Procedures for Auction 108*

Dear Ms. Dortch:

As the Nation's need for connectivity continues to skyrocket to meet, among others, virtual learning, work, and health applications, much of the 2496-2690 MHz ("2.5 GHz") band remains on the sideline. That is why T-Mobile continues to urge the Commission to finalize its auction procedures and promptly schedule an auction for what may be the only critical mid-band spectrum the Commission will make available in the immediate future that can support 5G wireless networks. Others seek to prevent T-Mobile and potential 2.5 GHz license holders from using the spectrum to provide service to the public. Verizon's recent *ex parte* letter is the latest in a series of disappointing attempts to stall the auction – this time by seeking to inject an unrelated and irrelevant contractual dispute into the Commission's consideration of procedures for the 2.5 GHz auction.^{1/}

Verizon contends that the Commission should, prior to auction, require the release of the relevant terms of existing leases involving the 2.5 GHz band, including the duration, whether there are rights of first refusal, and lease termination provisions. Verizon's purported justification for that request is a meritless Petition for Declaratory Ruling of the Christian College of Georgia, Inc. ("Christian College")^{2/} that improperly seeks to drag the Commission into a contractual dispute

^{1/} See Letter from Gregory Romano, Vice President and Associate General Counsel, Verizon, to Marlene H. Dortch, Secretary, FCC, AU Docket No. 20-429 (filed Dec. 17, 2021) ("Verizon *Ex Parte* Letter").

^{2/} See Petition for Declaratory Ruling of Christian College of Georgia, Inc., Call Sign WND620, Lease No. L000005369 (filed Nov. 3, 2021).



by inventing questions related to the rules governing the Educational Broadband Service (“EBS”). But the Christian College Petition cannot support Verizon’s request. As T-Mobile recently demonstrated in its response to Christian College,^{3/} the Commission does *not* embroil itself in contractual disputes. To the contrary, the Commission has routinely stated that it does not intervene in private contractual matters and will defer the resolution of those disputes to courts of competent jurisdiction or other proper forums.^{4/} The fact that this contractual dispute relates to an incumbent licensee in the 2.5 GHz band will not change the Commission’s usual and appropriate refusal to adjudicate contractual matters. Moreover, as T-Mobile has pointed out, its leasing terms with Christian College are clear,^{5/} and the fact that Christian College would like to abrogate them has no impact on the 2.5 GHz auction.

Putting aside Verizon’s attempt to insert a baseless contractual dispute into the Commission’s consideration of the 2.5 GHz band auction procedures, it and others continue to be wrong when they argue that a licensee’s contractual rights are “relevant to any prospective bidders’ valuation of nearby spectrum at auction.”^{6/} As T-Mobile has explained, the only information necessary to bid in an auction is about the spectrum being made available and any encumbrances on that spectrum.^{7/} That information for the 2.5 GHz band is already publicly available. Moreover, in

^{3/} See Letter from Steve B. Sharkey, Vice President, Government Affairs, Technology and Engineering Policy, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, Call Sign WND620, Lease No. L000005369 (filed Nov. 15, 2021) (“T-Mobile Nov. 15, 2021 *Ex Parte* Letter”).

^{4/} See, e.g., S.A. Dawson, Memorandum Opinion and Order, 17 FCC Rcd 472, 475 n.15 (2002) (citing *Airtouch Paging, Inc.*, Order, 14 FCC Rcd 9658 (1999)) (“The Commission generally does not adjudicate private contractual disputes, but instead attempts to reach a fair accommodation between its exclusive authority over licensing matters and the authority of state and local courts through procedures that defer contractual matters to courts to decide under state and local law.”); *Applications of Cricket License Co., LLC, et al., for Consent to Transfer Control of Authorizations, Application of Cricket License Co., LLC & Leap Licenseco Inc. for Consent to Assignment of Authorization*, Memorandum Opinion and Order, 29 FCC Rcd 2735, 2790 (2014) (“Here, Infrastructure is asking us to unilaterally eliminate a lease termination provision to which it voluntarily agreed. We agree with Applicants that such an action would be an inappropriate interference with a private contractual agreement.”); see also Letter from John J. Schauble, Deputy Chief, Broadband Division, Wireless Telecommunications Bureau, FCC, to Suzanne S. Goodwyn, Esq., Law Office of Suzanne S. Goodwyn, Counsel to Shekinah Network, 31 FCC Rcd 6831, 6832 (2016) (“To the extent there is a factual dispute regarding the start date of the lease, we believe the proper forum for resolving that dispute is a forum that normally handles contractual disputes, such as a court of competent jurisdiction or an arbitrator.”); Letter from John J. Schauble, Deputy Chief, Broadband Division, Wireless Telecommunications Bureau, FCC, to Rudolph J. Geist, Esq., RJGLawLLC, Counsel to the Consortium for Public Education, 29 FCC Rcd 15282 (2014) (“[T]he Commission has consistently refused to become involved in private contractual matters that can best be resolved in a court of competent jurisdiction.”).

^{5/} See generally T-Mobile Nov. 15, 2021 *Ex Parte* Letter.

^{6/} Verizon *Ex Parte* Letter at 2.

^{7/} See Letter from Steve B. Sharkey, Vice President, Government Affairs, Technology and Engineering Policy, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-120, AU Docket No. 20-429, at 2 (filed Dec. 6, 2021); Letter from Steve B. Sharkey, Vice President, Government Affairs, Technology and Engineering Policy, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-120, AU Docket No. 20-429, at 4 (filed Nov. 22, 2021) (“T-Mobile

no other auction involving the existence of incumbent licensees has the Commission required the disclosure of information – whether their contractual relationships, build out plans, customer bases, or other competitively sensitive data – about their authorizations.^{8/} Nor do the Commission’s leasing rules require such disclosures or contemplate making that information publicly available.^{9/} That is for good reason. Disclosure of leasing information could influence bidding strategies, distort auction results, and cause significant competitive harm. The Commission must not allow the auction process to be improperly used by potential bidders as a vehicle to fish for competitively sensitive information, regardless of whether the potential bidder thinks it might be useful as part of its bidding strategy. Indeed, a party could seek to participate in an auction merely to obtain the information without ever having an intention to bid.

Verizon, like AT&T and DISH,^{10/} is merely seeking leasing information related to the 2.5 GHz band in order to disadvantage a competitor – both by potentially delaying the auction and seeking confidential information. The Commission must reject that tactic. The continued rollout of 5G that the 2.5 GHz spectrum will support is too critical to delay the auction any longer. As Verizon itself has stated in its recent C-band advocacy, the Commission must “move quickly to make . . . mid-band spectrum available for 5G use.”^{11/}

Nov. 22, 2021 *Ex Parte* letter”); *see also* Letter from Steve B. Sharkey, Vice President, Government Affairs, Technology and Engineering Policy, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-120 and AU Docket No. 20-429 (filed Nov. 17, 2021) (“T-Mobile Nov. 17, 2021 *Ex Parte* Letter”).

^{8/} *See* T-Mobile Nov. 22, 2021 *Ex Parte* Letter at 3 (providing examples of past overlay auctions, including for 2.5 GHz spectrum, and explaining that the Commission has never required incumbent licensees to disclose how their spectrum was used prior to auction).

^{9/} *See id.*; T-Mobile Nov. 17, 2021 *Ex Parte* Letter at 3; Letter from Steve B. Sharkey, Vice President, Government Affairs, Technology and Engineering Policy, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-120 and AU Docket No. 20-429, at 6-8 (filed Sep. 15, 2021) (“T-Mobile Sept. 15, 2021 *Ex Parte* Letter”); *see also* 47 C.F.R. §§ 1.9020; 1.9030.

^{10/} *See* Letter from Alison Minea, Vice President and Associate General Counsel, Regulatory Affairs, DISH Network Corporation, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-120, AU Docket No. 20-429 (filed Oct. 20, 2021); Letter from Michael P. Goggin, Assistant Vice President – Senior Legal Counsel, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, AU Docket No. 20-429 (filed Aug. 17, 2021).

^{11/} Letter from William H. Johnson, Senior Vice President, AGC – Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 1 (filed Nov. 26, 2019); *see also* Letter from William H. Johnson, Senior Vice President, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 1 (filed Nov. 18, 2019) (“[W]e discussed the importance of mid-band spectrum as the United States seeks to maintain international competitiveness and win the global race to 5G, and the industry’s need for speed and certainty concerning the mid-band spectrum that will be made available.”); Letter from Gregory M. Romano, Vice President, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 2 (filed Oct. 9, 2019) (“[S]tudies agree on the importance that leading in 5G development and deployment can bring in terms of jobs, infrastructure, and economic growth. . . . [A] delay in the rollout of 5G in mid-band frequencies like the C-band – even by one year – would have costly impacts that will diminish the economic benefits highlighted above.”).

While Verizon would have the Commission believe that many potential bidders have made the same request it has, that is simply not true. Those most vocally advocating for disclosure, in addition to Verizon, are AT&T and DISH – both T-Mobile competitors that have a history of engaging in behavior to impede T-Mobile’s provision of service to the public and otherwise demonstrated little interest in holding and using 2.5 GHz spectrum. Unlike T-Mobile, none of these parties has pressed the Commission to auction the spectrum as soon as possible. And press reports suggest that those entities are unlikely to bid actively in the auction, other than to attempt to outbid T-Mobile, artificially raise prices, and prevent T-Mobile from winning and deploying spectrum.^{12/} The bases of the AT&T, DISH, and Verizon proposals are transparently little more than anti-competitive requests to disadvantage T-Mobile.

Finally, Verizon’s suggestion that leasing information be disclosed “pursuant to appropriate protective orders” does not change the analysis above or otherwise offer a credible basis for making that information available.^{13/} As T-Mobile has explained, even if the information was made available under protective order, it would be of little benefit to bidders and their bidding teams because protective orders typically limit access to the information.^{14/} In addition, in cases where protective orders have allowed a wider dissemination of information, including to bidders themselves, they have involved the disclosure of third-party information – *not* information about other potential bidders and certainly not for the purpose of providing information about one bidder to a potential direct competitor.^{15/}

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Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter has been submitted in the record of the above-referenced proceedings. If there are any questions concerning this matter, please contact the undersigned directly.

^{12/} See, e.g., Howard Buskirk, *Rosenworcel Faces Pressure to Schedule 2.5 GHz Auction*, COMM. DAILY (Dec. 13, 2021) (“Verizon and AT&T are unlikely to bid ‘other than marginally to make sure T-Mobile does not get licenses too cheaply.’”); *Verizon Urges Transparency on 2.5 GHz Licenses*, COMM. DAILY (Dec. 21, 2021) (“Verizon indicated interest in the 2.5 GHz band, dominated by T-Mobile, which the FCC is expected to auction next year. Verizon isn’t expected to be a big player in the auction.”); see also Monica Allevan, *T-Mobile Urges FCC to Get Moving on 2.5 GHz Auction Date*, FIERCEWIRELESS (Sept. 20, 2021, 12:21 PM), <https://www.fiercewireless.com/operators/t-mobile-urges-fcc-to-get-moving-2-5-ghz-auction-date> (“It’s not clear how valuable the 2.5 GHz spectrum would be for AT&T or Verizon, although it’s a safe bet they’re going to make it as hard as possible for T-Mobile to add it to its arsenal.”).

^{13/} Verizon *Ex Parte* Letter at 1.

^{14/} See T-Mobile Nov. 22, 2021 *Ex Parte* Letter at 3; T-Mobile Nov. 17, 2021 *Ex Parte* Letter at 4.

^{15/} See T-Mobile Nov. 22, 2021 *Ex Parte* Letter at 3 (citing *Auction of Flexible-Use Service Licenses in the 3.45-3.55 GHz Band (Auction 110)*, Protective Order, DA 21-1026 (rel. Aug. 20, 2021)); see also T-Mobile Sept. 15, 2021 *Ex Parte* Letter at 7-8 (citing *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Order and Data Collection Protective Order, 29 FCC Rcd 11657 (2014)).

Respectfully submitted,

/s/ Steve B. Sharkey

Steve B. Sharkey
Vice President, Government Affairs
Technology and Engineering Policy